



May 23, 2002

Mr. Terrence S. Welch
Brown & Hoffmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-2781

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163349.

The Town of Flower Mound (the "town"), which you represent, received a request for the e-mail addresses located in two specified e-mail address books. You inform us that there is no information responsive to the request pertaining to the first e-mail address listed. In this regard, we note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). With regard to the second e-mail address listed, you claim that the information responsive to this part of the request is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

First, we note that section 552.002 of the Government Code defines "public information" as

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

“information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.”

Gov't Code § 552.002(a). Thus, under this provision, information is generally “public information” within the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of one person. *See* Open Records Decision No. 635 at 4 (1995). In addition, section 552.001 of the Government Code states it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the *official acts of public officials* and employees. Gov't Code § 552.001(a). You inform us that

the e-mail address [at issue] is the personal e-mail address of [town] Mayor Lori DeLuca. Although the Mayor occasionally receives e-mail addresses related to Town business at her personal e-mail address, it also contains the e-mail addresses of family members, friends and business associates who have no connection to the Town

You have submitted a representative sample of e-mail addresses you state are responsive to the second part of the request. You have not, however, indicated which e-mail addresses are “e-mail addresses of family members, friends and business associates who have no connection to the Town,” and which are “e-mail addresses related to Town business.” We find that only those e-mail addresses of individuals who e-mailed the mayor “in connection with the transaction of official business” are public information under section 552.002 of the Government Code. The remaining e-mail addresses of family members, friends and business associates of the Mayor who did not e-mail in connection with the transaction of official business are not subject to the Act and need not be released to the requestor.

With regard to the remaining e-mail addresses of those who contacted the Mayor in connection with the transaction of official business, we address your argument under section 552.137. Section 552.137 provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Section 552.137 requires the town to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,

unless the member of the public has affirmatively consented to its release. As you inform us that no member of the public has affirmatively consented to release in this instance, we conclude that the town must withhold under section 552.137 the e-mail addresses of those members of the public who contacted the Mayor at the e-mail address at issue in connection with the transaction of official business.

To summarize, the town need not release information responsive to the first part of the request, as you inform us no such information existed at the time the request was received. With regard to the information responsive to the second part of the request, the town need not release the e-mail addresses of those who e-mailed the Mayor for reasons other than the transaction of official business, as this information is not considered public information under the Act. The remaining e-mail addresses of members of the public who e-mailed the Mayor in connection with the transaction of official business are excepted from disclosure under section 552.137.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 163349

Enc. Submitted documents

c: Mr. Mike Fickling
5116 Alexander
Flower Mound, Texas 75028
(w/o enclosures)